

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE COUNTY OF HENNEPIN

In the Matter of Schubert & Hoey  
Outdoor Advertising, Inc.  
for Relocation Benefits

**ORDER  
DENYING COUNTY'S  
MOTION FOR SUMMARY DISPOSITION  
AND FINDING CLAIMANT ELIGIBLE FOR  
RELOCATION BENEFITS**

This matter is pending before the undersigned Administrative Law Judge pursuant to Hennepin County's Motion for Summary Disposition filed on October 11, 2013. On October 25, 2013, Schubert & Hoey Outdoor Advertising, Inc., filed its Memorandum in Support of its Claim for Relocation Assistance and Benefits. On November 4, 2013, Hennepin County filed its reply. Oral argument on the motion was held on November 7, 2013 at the Office of Administrative Hearings. The motion record closed on that date, at the conclusion of oral argument.

Rick J. Sheridan, Assistant Hennepin County Attorney, appeared on behalf of Hennepin County (County). Marc J. Manderscheid, Briggs and Morgan, appeared on behalf of Schubert & Hoey Outdoor Advertising, Inc. (Schubert).

Based on the record, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

**ORDER**

**IT IS HEREBY ORDERED** that:

1. Hennepin County's Motion for Summary Disposition is **DENIED**.
2. Schubert is eligible for relocation assistance and other benefits pursuant to the Minnesota Uniform Relocation Act.

3. Hennepin County shall provide Schubert with relocation assistance and other benefits as provided for by the Minnesota Uniform Relocation Act.

Dated: December 9, 2013

s/Jeanne M. Cochran  
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JEANNE M. COCHRAN  
Administrative Law Judge

Digitally recorded; no transcript.

### **MEMORANDUM**

This proceeding involves Schubert's claim for relocation assistance and other benefits pursuant to the Minnesota Uniform Relocation Act (MURA), Minnesota Statutes sections 117.50-117.56. The scope of this proceeding is limited to whether Schubert is eligible to receive such benefits pursuant to the MURA.<sup>1</sup> In its Motion for Summary Disposition, the County argues that Schubert is not eligible for relocation assistance and other benefits pursuant to the MURA. Schubert opposes the County's motion, claiming that Schubert is entitled to such benefits.

### **Legal Background**

The MURA is intended to "make public funds available to reimburse relocation costs incurred by households and businesses displaced by public acquisition of property where there is no federal financial participation."<sup>2</sup> The MURA provides that:

In all acquisitions undertaken by any acquiring authority..., in which, due to the lack of federal financial participation, relocation assistance, services, payments and benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, United States Code, title 42, sections 4601 to 4655, as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Statutes at Large, volume 101, pages 246 to 256 (1987), are not available, the acquiring authority, as a cost of acquisition, shall provide all relocation assistance, services, payments and benefits required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and those regulations adopted pursuant thereto, and either (1) in effect as

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<sup>1</sup> NOTICE AND ORDER FOR HEARING at 2 (August 14, 2013).

<sup>2</sup> *In re Relocation Benefits of James Bros. Furniture, Inc.*, 642 N.W.2d 91, 95 (Minn. Ct. App. 2002).

of January 1, 2006, or (2) becoming effective after January 1, 2006, following a public hearing and comment.<sup>3</sup>

This language, by its terms, incorporates the requirements of the comparable federal act, the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), into state law.<sup>4</sup> The MURA also expressly incorporates the federal definition of “displaced person” into the MURA.<sup>5</sup> The term “displaced person” is defined in the federal URA as “any person who moves from real property, or moves his personal property from real property ... as a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part for a program or project undertaken by a Federal agency or with Federal financial assistance” subject to certain specified exclusions.<sup>6</sup> The term “displaced person” is one of the key elements of the federal URA.<sup>7</sup> By incorporating these provisions of the federal URA into the MURA, the legislature has required a Minnesota “acquiring authority” to provide the same relocation assistance and benefits to a “displaced person” as the federal authorities would be required to provide under the federal URA.<sup>8</sup>

### Summary Disposition Standard

Summary disposition is the administrative equivalent of summary judgment.<sup>9</sup> Summary judgment is appropriate when there is no genuine issue of material fact and a party is entitled to judgment as a matter of law.<sup>10</sup> A genuine issue is one that is not a sham or frivolous, and a material fact is one which will affect the outcome of the case.<sup>11</sup> The Office of Administrative Hearings has generally followed the summary judgment standards developed in judicial courts in considering motions for summary disposition regarding contested case matters.<sup>12</sup>

Under those standards, the moving party must demonstrate that no genuine issues of material fact exist.<sup>13</sup> If the moving party is successful, the nonmoving party

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<sup>3</sup> Minn. Stat. § 117.52 (2012).

<sup>4</sup> The URA is designed to “establish a uniform policy for the fair and equitable treatment of persons displaced as a direct result of programs and projects undertaken by a Federal agency or with Federal financial assistance.” 42 U.S.C. § 4621(b).

<sup>5</sup> Minn. Stat. § 117.50, subd. 3 (defining “displaced person” as “any person who, notwithstanding a lack of federal financial participation, meets the definition of a displaced person under United States Code, title 42, sections 4601 to 4655, and regulations adopted under those sections”).

<sup>6</sup> 42 U.S.C. § 4601(6) (defining “displaced person”); 49 C.F.R. § 24.2(a)(9) (also defining “displaced person”); 49 C.F.R. § 24.2(a)(21) (defining “person” to mean “any individual, family, partnership, corporation, or association”).

<sup>7</sup> 42 U.S.C. § 4601(6); 42 U.S.C. § 4622(a); 42 U.S.C. § 4625; 49 C.F.R. § 24.2(a)(9); 49 C.F.R. 24.301(a)(1).

<sup>8</sup> *Northern States Power Co. ex rel. Bd. Of Directors v. Aleckson*, 831 N.W.2d 303, 309 (Minn. 2013) (“NSP”).

<sup>9</sup> See Minn. R. 1400.5500(K); Minn. R. Civ. P. 56.03.

<sup>10</sup> Minn. R. Civ. P. 56.03.

<sup>11</sup> *Highland Chateau v. Minnesota Dep’t of Pub. Welfare*, 356 N.W.2d 804, 808 (Minn. Ct. App. 1984), *rev. denied* (Minn. Feb. 6, 1985).

<sup>12</sup> Minn. R. 1400.6600.

<sup>13</sup> *Theile v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

then has the burden of proof to show specific facts are in dispute that can affect the outcome of the case.<sup>14</sup> It is not sufficient for the nonmoving party to rest on mere averments or denials; it must present specific facts demonstrating a genuine issue for trial.<sup>15</sup> When considering a motion for summary judgment, the judge must view the facts in the light most favorable to the non-moving party.<sup>16</sup> All doubts and factual inferences must be resolved against the moving party.<sup>17</sup> If reasonable minds could differ as to the import of the evidence, judgment as a matter of law should not be granted.<sup>18</sup>

## Factual Background

For the purposes of this motion, the following facts are not disputed. Beginning as early as 1954, Schubert leased land along the north side of Highway 55 in what is now the City of Medina.<sup>19</sup> Schubert built two billboards on the property (Medina Property) sometime before 1966.<sup>20</sup> In 1975, Schubert obtained a permit from the Minnesota Department of Transportation (MnDOT) authorizing Schubert to continue to maintain the billboards along Highway 55 on the Medina Property.<sup>21</sup>

The Medina Property changed owners a number of times between 1954 and 1997.<sup>22</sup> In 1997, the County obtained title to and possession of the Medina Property, including the portion where Schubert's billboards are located, through a condemnation proceeding.<sup>23</sup> The County acquired the Medina Property as part of a County plan to enhance the intersection of State Highway No. 55 and County Road No. 118 (Arrowhead Drive).<sup>24</sup> In its Petition for Condemnation, the County stated that it needed to take possession of the Medina Property and "all structures thereon" for purposes of "reconstruction, alteration, construction, widening, improvement and maintenance on County Road No. 118 and Trunk Highway No. 55" and "for safety and travel on said roads."<sup>25</sup> The County also asserted that it needed "exclusive control" of the same for its road project (Highway 55 Project).<sup>26</sup>

When the County filed its condemnation petition, the County failed to name Schubert as a party to the condemnation proceeding even though it was required to do so.<sup>27</sup> The County also failed to serve Schubert with the petition.<sup>28</sup> At the time the

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<sup>14</sup> *Highland Chateau*, 356 N.W.2d at 808.

<sup>15</sup> See Minn. R. Civ. P. 56.05.

<sup>16</sup> *Ostendorf v. Kenyon*, 347 N.W.2d 834 (Minn. Ct. App. 1984).

<sup>17</sup> *Thiele*, 425 N.W.2d at 583.

<sup>18</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250-51 (1986).

<sup>19</sup> Affidavit (Aff.) of Michael Hylandsson (Hylandsson Aff.) at ¶ 3.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at ¶¶ 3, 5-6; Aff. of Marc Manderscheid (Manderscheid Aff.) at ¶ 3 and Exhibit (Ex.) B.

<sup>23</sup> Manderscheid Aff. at ¶ 3 and Ex. B.

<sup>24</sup> Aff. of J. Michael Noonan (Noonan Aff.) at ¶ 4.

<sup>25</sup> Manderscheid Aff. at ¶ 2 and Ex. A.

<sup>26</sup> *Id.*

<sup>27</sup> *County of Hennepin v. Schubert & Hoey Outdoor Advertising, Inc.*, 27-CV-13-3711, Fourth Judicial District, ORDER AND MEMORANDUM, MEMORANDUM at 1, 3 (July 16, 2013); Hylandsson Aff. at ¶ 11.

<sup>28</sup> *Id.*

County commenced the condemnation proceeding, Schubert had a valid lease with the property owner. The lease expired during the course of the condemnation proceeding and was renewed before the County acquired the Medina Property. At the time the County obtained title and possession to the property, Schubert had approximately 11 months remaining on the lease with the prior owner.<sup>29</sup> Because the County failed to name Schubert as a party in the condemnation proceeding, the County did not acquire Schubert's leasehold interest in the Medina Property, only fee title.<sup>30</sup>

The County completed the intersection enhancement in 1998.<sup>31</sup> The County was able to complete the intersection upgrade without removal of Schubert's billboards, and the billboards have remained on the Medina Property to date.<sup>32</sup> No federal funds were used in connection with the Highway 55 Project.<sup>33</sup>

Because Schubert did not know that the County had acquired the Medina Property, Schubert continued to enter into leases for the billboards with the persons whom Schubert believed owned the land on which the billboards are located.<sup>34</sup> Schubert did not learn that the County had acquired the property until January 2012 when a representative of MnDOT contacted Michael Hylandsson, Schubert's Leasing Manager, to let Schubert know that MnDOT planned to take the Medina Property. The MnDOT representative told Schubert that Schubert's billboards were on County property, and that the County had agreed to transfer the Highway 55 right-of-way to the State.<sup>35</sup>

In March 2012, Mr. Hylandsson of Schubert spoke with the County real estate manager, Michael Noonan, by telephone. Mr. Noonan informed Mr. Hylandsson that the County planned to turn over the Medina Property to the State, and that MnDOT did not want any signs on the property.<sup>36</sup> Mr. Hylandsson inquired as to whether there was any possibility that Schubert could enter into a lease with the County for use of the piece of property where the billboards were located. Mr. Noonan indicated that there were other instances where the County had rented County property to sign companies.<sup>37</sup>

On March 30, 2012, Schubert sent the County two copies of a proposed lease for the County to sign and a \$1,200 check to cover the rent for the coming year.<sup>38</sup> On May 17, 2012, Schubert sent the County a check for \$200. This check was intended to cover rental of the property for the months of April and May 2012.<sup>39</sup>

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<sup>29</sup> *Id.*; Hylandsson Aff. at ¶ 6.

<sup>30</sup> *See id.*

<sup>31</sup> Noonan Aff. at ¶ 5; Aff. of James Grube (Grube Aff.) at ¶¶ 3, 6, 7.

<sup>32</sup> Noonan Aff. at ¶¶ 6-7.

<sup>33</sup> Grube Aff. at ¶ 4.

<sup>34</sup> Hylandsson Aff. at ¶¶ 6-7.

<sup>35</sup> *Id.* at ¶ 8.

<sup>36</sup> *Id.* at ¶ 9.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at ¶ 9 and Ex. 3.

<sup>39</sup> *Id.* at ¶ 12 and Ex. 6.

By a letter dated May 23, 2012, the County advised Schubert that it would not be entering into a lease with Schubert and that Schubert needed to remove its billboards no later than August 31, 2013 from the Medina Property because the State had requested that the County transfer ownership of the Medina Property to the State.<sup>40</sup> On May 24, 2012, Schubert sent a letter to the County advising the County that it was Schubert's position that it was "eligible for relocation benefits under MN Stat. 117." Schubert also stated that the County had failed to provide the required notice to Schubert of the 1997 condemnation proceeding.<sup>41</sup>

By a letter dated May 29, 2012, the County responded that, in its view, the provisions of Minnesota Statutes chapter 117 were not applicable because the County did not acquire Schubert's leasehold interest when it acquired the Medina Property in 1997.<sup>42</sup> The County and Schubert never entered into a lease for use of the Medina Property after the County acquired the property.<sup>43</sup>

Sometime after May 2012 and before mid-May 2013, MnDOT decided not to acquire the property where the billboards are located.<sup>44</sup> The County, however, did not rescind its demand that Schubert remove the billboards from the Medina Property. The County made an internal decision that it wanted the signs removed. The County did not provide any reason for its decision.<sup>45</sup>

On January 28, 2013, the County filed an ejectment action in Hennepin County District Court against Schubert. By an Order and Memorandum dated July 16, 2013, Judge Regina Chu granted the County's motion for summary judgment on its ejectment claim, and ordered Schubert to vacate the Medina Property and "remove all advertising signs or other personal property."<sup>46</sup> In the proceeding before Judge Chu, Schubert had requested that the County be ordered to provide relocation assistance and other benefits to Schubert pursuant to Minnesota Statutes section 117.52. Judge Chu declined to address the issue, finding that the District Court lacked jurisdiction over the issue because Minnesota Statutes section 117.52 requires the issue to be raised in a contested case proceeding before an Administrative Law Judge.<sup>47</sup> As a result of Judge Chu's ruling, the above-captioned proceeding was commenced before the undersigned Administrative Law Judge.

## **Positions of the Parties**

### **A. The County's Position**

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<sup>40</sup> *Id.* at ¶¶ 12-13 and Ex. 7; see also Aff. of Rick Sheridan (Sheridan Aff.), Ex. D (similar letter dated May 2, 2012).

<sup>41</sup> *Id.* at ¶ 15; Sheridan Aff., Ex. B.

<sup>42</sup> *Id.* at ¶ 16; Sheridan Aff., Ex. C.

<sup>43</sup> Noonan Aff. at ¶ 3.

<sup>44</sup> See Hylandson Aff. at ¶ 9; Noonan Aff. at ¶¶ 6-7.

<sup>45</sup> See Noonan Aff. at ¶¶ 6-7.

<sup>46</sup> *Hennepin County v. Schubert & Hoey Outdoor Advertising, Inc.*, Fourth Judicial District, File No. 27-CV-13-3711, ORDER AND MEMORANDUM (July 16, 2013)).

<sup>47</sup> *Id.* at 4-5; Minn. Stat. § 117.50, subd. 4.

The County asserts that Schubert is not eligible for relocation assistance or other benefits under the MURA for two primary reasons. First, the County argues that there has not been an “acquisition” subject to the MURA because the County did not acquire Schubert’s leasehold interest. The County also asserts that the County’s demand for Schubert to vacate the property in 2012 was not an “acquisition” within the scope of the MURA.<sup>48</sup>

Second, even assuming there was an “acquisition” subject to the MURA, the County argues that Schubert is not eligible for relocation assistance because, according to the County, Schubert is not a “displaced person” within the meaning of the MURA.<sup>49</sup> The County maintains that Schubert is an “unlawful” occupant who is excluded from the definition of “displaced person” because Judge Chu granted the County’s ejectment motion.<sup>50</sup> Alternatively, the County argues that Schubert is not a “displaced person” because, according to the County, Schubert was not required to vacate the property as a “direct” result of a County project.<sup>51</sup>

## **B. Schubert’s Position**

Schubert disagrees with the County’s position and instead contends that it is entitled to relocation assistance and other benefits under the MURA.<sup>52</sup> First, Schubert argues that there was an “acquisition” for purposes of the MURA. Schubert maintains that the County’s “acquisition” of fee title to the Medina Property was sufficient to trigger the MURA.<sup>53</sup> Next, Schubert argues that it is a “displaced person” because Schubert is being forced to remove its billboards as a “direct” result of the County’s acquisition of the property. Schubert contends that the passage of time between when the land was acquired by the County and when the County told Schubert to vacate the property does not change the fact that the sole reason that Schubert is being required to remove its billboards is the County’s acquisition of the Medina Property.<sup>54</sup> Finally, Schubert disputes the County’s claim that Schubert is excluded from the definition of “displaced person” as an “unlawful” occupant.<sup>55</sup>

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<sup>48</sup> Respondent’s Memorandum of Law in Support of Motion for Summary Disposition (County’s Memorandum) at 3-4.

<sup>49</sup> *Id.* at 5-6.

<sup>50</sup> See 49 C.F.R. § 24.2(a)(9)(ii)(K); *Hennepin County v. Schubert & Hoey Outdoor Advertising, Inc.*, Fourth Judicial District, File No. 27-CV-13-3711, ORDER AND MEMORANDUM (July 16, 2013).

<sup>51</sup> *Id.* at 6.

<sup>52</sup> Schubert’s Memorandum in Support of its Claim for Relocation Assistance and Benefits (Schubert Memorandum) at 1-24.

<sup>53</sup> *Id.* at 13-14, 18-20.

<sup>54</sup> *Id.* at 16-18, 20-23.

<sup>55</sup> *Id.* at 20-22.

## Legal Analysis

This case presents two main legal issues: (1) whether there has been an “acquisition” by the County subject to the MURA; and (2) if so, whether Schubert is a “displaced person” eligible for “relocation assistance, services, payments and benefits” pursuant to the MURA. These issues are addressed in turn below.

### A. Was there an “acquisition” by the County subject to the MURA?

It is undisputed that the County acquired fee title to the Medina Property in 1997 through a condemnation proceeding. It is also undisputed that the County did *not* acquire Schubert’s leasehold interest in 1997 when it acquired fee title to the property. Nor did the County and Schubert ever enter into a lease for the Medina Property after the County acquired fee title to the property. Thus, the question presented by this case is whether the County’s taking of the Medina Property in 1997 by condemnation was an “acquisition” for purposes of the MURA.

The MURA provides that “[i]n all acquisitions undertaken by any acquiring authority” in which there is no federal financial participation, the “acquiring authority” is required to provide “all relocation assistance, services, payments and benefits required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended..., and those regulations adopted pursuant thereto....”<sup>56</sup> Under the MURA, the term “acquisition” includes:

- (a) acquisition by eminent domain;
- (b) acquisition by negotiation;
- (c) programs of areawide systematic housing code enforcement; and
- (d) demolition.<sup>57</sup>

The term “acquisition” is not defined in the MURA, but the Minnesota Supreme Court has interpreted the term as used in the MURA to have its common meaning.<sup>58</sup> The Court noted that Webster’s Third New International Dictionary defines the phrase “to acquire” as “to come into possession, control, or power of disposal.”<sup>59</sup>

Here, it is undisputed that the County took possession and fee title to the Medina Property in 1997 through a condemnation proceeding.<sup>60</sup> According to Black’s Law Dictionary, “condemnation” is the “[p]rocess of taking for public use through the power of eminent domain.”<sup>61</sup> Because the County took possession of the Medina Property by

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<sup>56</sup> Minn. Stat. § 117.52 (emphasis added).

<sup>57</sup> Minn. Stat. § 117.50, subd. 4.

<sup>58</sup> *Id.*; *Gilliland v. Port Authority of the City of St. Paul*, 270 N.W.2d 743, 746 (Minn. 1978).

<sup>59</sup> *Gilliland*, 270 N.W.2d at 746.

<sup>60</sup> *Manderscheid Aff.* at ¶ 3 and Ex. B.

<sup>61</sup> Black’s Law Dictionary (5<sup>th</sup> Ed.); see also, *Manderscheid Aff.*, Ex. A (County’s condemnation petition characterizing the condemnation proceeding as a proceeding in “eminent domain”).



eminent domain, the County's acquisition of the property is an "acquisition" within the scope of the MURA.<sup>62</sup>

In addition, the "acquisition" was by an "acquiring authority" as defined by the MURA. The MURA defines "acquiring authority" to include "the state and every public and private body and agency thereof which has the power of eminent domain."<sup>63</sup> The County is a public body with the power of eminent domain and thus is an "acquiring authority."<sup>64</sup>

Finally, by its terms, the MURA applies "[i]n all acquisitions undertaken by any acquiring authority" for which there is no federal financial participation.<sup>65</sup> It is undisputed that there was no federal financial participation in the Highway 55 Project for which the Medina Property was acquired.<sup>66</sup> Thus, the County's acquisition of the Medina Property is an acquisition within the scope of the MURA.

The County argues, however, that the MURA does not apply because the County did not take Schubert's leasehold interest at the time it acquired fee title to the underlying property. The County's argument is misplaced. Nothing in the plain language of the statute requires the County to acquire the leasehold interest in order for the provisions of the MURA to apply. To the contrary, the plain language of the MURA specifies that it applies "*in all acquisitions undertaken by any acquiring authority....*"<sup>67</sup> Because the County's taking of the Medina Property is an "acquisition" by an "acquiring authority" within the meaning of the MURA, the provisions of the MURA apply to the County's acquisition of the property.

Moreover, the reason the County did not take Schubert's leasehold interest in the condemnation proceeding is because the County erroneously did not name Schubert as a party to the proceeding.<sup>68</sup> The County's failure to do so, however, does not change the fact that there was an "acquisition" by the County within the scope of the MURA.<sup>69</sup> Moreover, any other interpretation of the MURA would lead to the absurd result that the County would be rewarded for failing to comply with the applicable legal requirements in the condemnation proceeding.<sup>70</sup>

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<sup>62</sup> See, Minn. Stat. § 117.50, subd. 4; *Gilliland*, 270 N.W.2d at 746.

<sup>63</sup> Minn. Stat. § 117.50, subd. 5(a).

<sup>64</sup> See *Manderscheid Aff.*, Ex. A (County's condemnation petition stating that the County has the power to take property by condemnation); Minn. Stat. § 117.012.

<sup>65</sup> Minn. Stat. § 117.52, subd. 1.

<sup>66</sup> *Grube Aff.* at ¶ 4.

<sup>67</sup> Minn. Stat. § 117.52, subd. 1.

<sup>68</sup> See *County of Hennepin v. Schubert & Hoey Outdoor Advertising, Inc.*, 27-CV-13-3711, Fourth Judicial District, ORDER AND MEMORANDUM, MEMORANDUM at 1, 3 (July 16, 2013).

<sup>69</sup> See, Minn. Stat. § 117.50, subd. 4; *Gilliland*, 270 N.W.2d at 746.

<sup>70</sup> Minn. Stat. § 645.17(1).

**B. Is Schubert entitled to relocation assistance and other benefits as a result of the “acquisition”?**

Having found that there was an “acquisition” undertaken by the County within the scope of the MURA, the next question is whether the County is required to provide Schubert with relocation assistance, services, payments or other benefits under the terms of the MURA as a result of the acquisition.

In *Northern States Power Co. ex rel. Bd. Of Directors v. Aleckson*, the Minnesota Supreme Court recently addressed the standard to be used to determine when a business or individual is entitled to relocation assistance and other benefits under the MURA.<sup>71</sup> The Court held that:

Under section 117.52, when there is no federal participation in a project that requires real property acquisition, a Minnesota acquiring authority must provide the same relocation assistance to a “displaced person” that federal authorities would be required to provide under 42 U.S.C. §§ 4601-55....<sup>72</sup>

The Court then examined the definition of “displaced person” in the federal law, which has been incorporated into the MURA.<sup>73</sup> As noted above, the federal law defines a “displaced person,” in relevant part, as:

any person who moves from real property, or moves his personal property from real property—

- (l) as a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part for a program or project undertaken by a Federal agency or with Federal financial assistance.<sup>74</sup>

Based on this definition, the Minnesota Supreme Court concluded that to qualify as a “displaced person,” the individual or business must satisfy two “primary elements”: (1) the person must be required to move from the property “as a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part”; and (2) the acquisition of the property must be “for” a program or project undertaken by the acquiring authority.<sup>75</sup>

In this case, the undisputed facts show that Schubert meets both elements of the definition of a “displaced person.” With regard to the first element, the facts show

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<sup>71</sup> *NSP*, 831 N.W.2d at 309.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> See *id.* (citing 42 U.S.C. § 4601(6)(A)(i)(I)). The definition also excludes certain persons from qualifying as a “displaced person” including “a person who has been determined... to be either in unlawful occupancy of the displacement dwelling....” 42 U.S.C. § 4601(6)(B)(i).

<sup>75</sup> *NSP*, 831 N.W.2d at 309.

that Schubert was ordered to vacate the Medina Property as a “direct” result of the County’s acquisition of the property. When the County acquired the Medina Property in 1997, the County told the District Court that it needed the entire piece of property, *including* the portion with the billboards, for the Highway 55 Project. In 2012, the County demanded that Schubert remove its billboards and vacate the property.<sup>76</sup> In 2013, the County obtained a court order requiring Schubert to do so.<sup>77</sup> The only reason the County is able to require Schubert to vacate the property is because the County condemned the property. If the County had not acquired the Medina Property for the Highway 55 Project, it would not have been able to require Schubert to vacate the property. Thus, Schubert is being required to vacate the property as a “direct” result of the County’s acquisition of the Medina Property. There is no evidence of any intervening cause.<sup>78</sup>

The facts also demonstrate that the County acquired the Medina Property “for” a County project. In its condemnation petition, the County stated that it needed to take the Medina Property, *including* the portion where the billboards are located, for purposes of “reconstruction, alteration, construction, widening, improvement and maintenance on County Road No. 118 and Trunk Highway No. 55” and “for safety and travel on said roads.”<sup>79</sup> Because the County acquired the Medina Property for purposes of the Highway 55 Project, the second element of the *NSP* test is met. Thus, Schubert is a “displaced person” as defined by the MURA.<sup>80</sup>

The County’s arguments to the contrary are not persuasive. First, the County argues that because Schubert’s billboards remained on the property during and after construction of the intersection upgrade, Schubert is not being required to move as a “direct” result of the Highway 55 Project.<sup>81</sup> The County’s condemnation petition, however, shows that the Highway 55 Project is broader than just the construction of the intersection upgrade. It also includes the taking of property for “maintenance” and “safety” purposes. To meet these public purposes, the Highway 55 Project required more than just the property where the upgraded intersection was actually built. The Highway 55 Project also required the property where the billboards are located. That property is currently being used for right-of-way purposes.<sup>82</sup> If the property where the billboards are located was not needed for the Highway 55 Project, then the County

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<sup>76</sup> Hylandsson Aff. at ¶13; Sheridan Aff., Ex. D.

<sup>77</sup> See *County of Hennepin v. Schubert & Hoey Outdoor Advertising, Inc.*, 27-CV-13-3711, Fourth Judicial District, ORDER AND MEMORANDUM, MEMORANDUM at 1, 3 (July 16, 2013).

<sup>78</sup> The fact that the County has not given a reason for requiring Schubert to remove the signs confirms that there is no intervening cause. See, Noonan Aff. at ¶ 7.

<sup>79</sup> Manderscheid Aff. at ¶ 2 and Ex. A.

<sup>80</sup> In its Memorandum, Schubert points out that the definition of “displaced person” in 1997 was different than the current definition. Schubert Memorandum at 17, n.2. However, Schubert did not become displaced until 2012 at the earliest when the County demanded that it vacate the property and possibly not until 2013 when the District Court granted the County’s ejectment petition. Therefore, the 1997 definition of “displaced person” is not applicable in this proceeding. Moreover, as noted by Schubert, the company falls within the scope of both the 1997 definition and the current definition.

<sup>81</sup> County Memorandum at 6.

<sup>82</sup> See Hylandsson Aff. at ¶ 8 (stating that the County informed him that it planned to turn over the “Highway No. 55 right of way to [MnDOT]” and that “[MnDOT] did not want any signs on the property.”)

would not have been entitled to take the property by eminent domain in the 1997 condemnation proceeding. Thus, the County's focus on whether the intersection was upgraded without removal of the billboards is misplaced. Similarly, the County's focus on the passage of time between when the County acquired the property and when the County required Schubert to vacate the property is misplaced because the facts show that Schubert is being forced to vacate the property as a "direct" result of the County's acquisition of the property notwithstanding the passage of time.<sup>83</sup>

Second, the County argues that Schubert does not qualify as a "displaced person" because, under the federal rules, the definition of "displaced person" excludes a person "who is determined to be in unlawful occupancy prior to or after the initiation of negotiations" for the property.<sup>84</sup> The County maintains that Schubert falls within this exclusion because the District Court ordered Schubert to vacate the property in July 2013. A close examination of the rule language, when read in conjunction with the federal statute that it is implementing, however, demonstrates that Schubert does not fall within the scope of the exclusion.

As discussed above, the definition of "displaced person" under the MURA incorporates the definition of "displaced person" in the federal URA and the rules adopted pursuant to that law.<sup>85</sup> By its terms, the federal URA provides that:

The term "displaced person" **does not include—**

(i) a person who has been determined, according to criteria established by the head of the lead agency, to be either **in unlawful occupancy of the displacement dwelling** or to have **occupied such dwelling** for the purpose of obtaining assistance under this chapter;

(ii) in any case in which the displacing agency acquires property for a program or project, **any person (other than a person who was an occupant of such property at the time it was acquired)** who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.<sup>86</sup>

The exclusion based on "unlawful occupancy" in clause (B)(i) is specifically limited to persons who are unlawful occupants of "**dwellings**."<sup>87</sup> In addition, the exclusion of

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<sup>83</sup> See *In re Jensen Field Relocation Claims*, 817 N.W.2d 724, 730-733 (Minn. Ct. App. 2012) (holding that the determination as to whether a tenant whose lease expired is a "displaced person" focuses on the reason for the displacement, not on the existence of property rights at the time of displacement); *In re Relocation Benefits of James Bros. Furniture, Inc.*, 642 N.W.2d 91, 98-100 (Minn. Ct. App. 2002) (holding that a tenant qualifies as a "displaced person" where the tenant is forced to move as a result of an acquisition even though the acquiring authority allowed the tenant to remain on the property after the acquisition without a long-term lease; the prior version of the definition of "displaced person" was applied in this case but the reasoning is equally applicable to the timing question).

<sup>84</sup> County Memorandum at 5 (citing 49 C.F.R. § 24.2(a)(9)(ii)(K)).

<sup>85</sup> Minn. Stat. § 117.50, subd. 3.

<sup>86</sup> 42 U.S.C. § 4601(6)(B) (emphasis added).

<sup>87</sup> *Id.* (emphasis added)

renters in clause (B)(ii) provides that the exclusion does not apply to persons who are occupants at the time of the acquisition.

Because the exclusion based on “unlawful occupancy” in the federal statute is limited to unlawful occupants of dwellings, the federal rule must be read in a consistent manner. When read in this light, it is clear that the federal rule cited by the County is intended to apply only to persons who have been determined to be unlawful occupants of dwellings, and not to persons, like Schubert, who have billboards on the acquired property.<sup>88</sup>

In addition, even if this exclusion is interpreted to apply not just to “unlawful” occupants of dwellings, the exclusion still does not apply to Schubert because the exclusion is not intended to apply to persons who are lawful renters at the time of the acquisition. As set forth above, the definition of “displaced person” in the federal URA includes both: (i) an exclusion for “unlawful” occupants; and (ii) language specifying that persons who occupy the property at the time of the acquisition are *not excluded* from the definition of “displaced person.”<sup>89</sup> When these provisions are read together, it is clear that the exclusion based on “unlawful occupancy” in the rule is limited to persons who have been determined to be unlawful occupants at the time of the acquisition, not after the acquisition, as the County argues. Any other interpretation would lead to the illogical result that the acquiring authority could avoid providing relocation assistance to persons who are renting under a valid lease at the time the property is acquired simply by allowing the renter to remain on the property until the lease expires and then filing an ejectment action for purposes of claiming that the person is an “unlawful” occupant.<sup>90</sup> Such a result would be contrary to the purposes of the MURA, and inconsistent with prior OAH precedent.<sup>91</sup> Because the undisputed facts show that Schubert had a valid lease for the use of the Medina Property for its billboards at the time the County acquired the property, the exclusion in the federal rule for “unlawful” occupants does not apply to Schubert.

For the reasons set forth above, the Administrative Law Judge concludes that Schubert is a “displaced person” within the meaning of the MURA.

### **C. Conclusion**

Because the County acquired the Medina Property for a public project, it is required by the MURA to provide relocation assistance and other benefits to all

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<sup>88</sup> *Id.*; 49.C.F.R. § 24.2(a)(9)(ii)(K).

<sup>89</sup> 42 U.S.C. § 4201(6)(B).

<sup>90</sup> See Minn. Stat. § 645.17(1) (the legislature does not intent a result that is absurd).

<sup>91</sup> *In re Application for Relocation Benefits of James Brothers Furniture*, 642 N.W.2d at 95 (stating that the MURA is intended to make public funds available to households and businesses displaced by public acquisitions of property); *In the Matter of Relocation Benefits Claim of Hoey Outdoor Advertising Inc.*, OAH Docket No. 3-6029-20853, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER (concluding that a billboard company was a “displaced person” within the meaning of the MURA where the billboard company had a valid lease at the time of the acquisition, but the lease had expired at the time the company was required to remove the billboards).

“displaced person[s].”<sup>92</sup> As discussed above, Schubert is a “displaced person” within the meaning of the MURA. Therefore, the County’s motion for summary disposition is denied, and the County is required to provide Schubert with relocation assistance, services, payments and benefits pursuant to the MURA.<sup>93</sup>

**J. M. C.**

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<sup>92</sup> See Minn. Stat. § 117.52; *NSP*, 831 N.W.2d at 309.

<sup>93</sup> The parties stipulated that if the Administrative Law Judge determined that Schubert was eligible for relocation assistance and other benefits under the MURA, the parties would attempt to reach agreement on the amount owed to Schubert. If the parties are unable to reach agreement on the amount owed, the parties can request that the Administrative Law Judge determine the amount owed in a subsequent proceeding. See Minn. Stat. § 117.52, subd. 4.